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November 7, 2024

**VIA ECF**

Hon. Paul A. Engelmayer  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007

RE: Union Mutual Fire Insurance Company v. Mario Tejada et. al.  
Civil Case No.: 20-cv-9166 (PAE)  
Our File No.: 20211263

Dear Hon. Judge Engelmayer:

Our office represents Plaintiff, Union Mutual Fire Insurance Company, (“Union Mutual”) in the above-referenced declaratory judgment action, which seeks a declaration that Union Mutual has no obligation to defend or indemnify Mario Tejada or Beverly Joaquin in the Supreme Court, Bronx County action styled *Pablo Brito v. Mario Tejada and Beverly Joaquin*, Index No. 32406/2019E (the “Underlying Action”). Please allow this report to serve as a joint update on the Underlying Action pursuant to the Court’s August 9, 2024 So-Ordered Memo Endorsement, ECF No. 109. As noted in the parties’ previous joint status update, the State Court granted the motion for summary judgment in part and granted the cross-motion to amend the complaint in part in the Underlying Action. The Underlying Action has been dismissed as to Joaquin.

Currently, Union Mutual is providing Tejada with what it contends is a courtesy defense and is awaiting the resolution of the Underlying Action to determine Union Mutual’s indemnity obligations. As asserted in Union Mutual’s prior submissions, Union Mutual’s position is that the adjudication of the Underlying Action is necessary prior to a trial in this declaratory judgment action.

By way of background, Tejada and Joaquin moved for an Order pursuant to CPLR § 3212 (1) disregarding/striking the unpled Labor Law claims in the bill of particulars; (2) dismissing the negligence and Labor Law § 200 claims against Joaquin; and (3) dismissing the unpled Labor Law §§ 240 and 241(6) claims against Tejada and Joaquin. The state court granted Tejada and Joaquin’s motion to strike the allegations in the verified bill of particulars regarding the alleged Labor law §§ 240 and 241(6) and Industrial Code violations, finding they



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were not applicable. The complaint was dismissed as to Joaquin, and the state court permitted Brito to add a cause of action against Tejada premised on Labor Law § 200 only.

Based on the decision in the Underlying Action, Union Mutual requested a continued stay in this action to avoid a conditional judgment or advisory opinion.

The parties in the Underlying Action appeared for a settlement conference on October 21, 2024, however, jury selection has now been scheduled for May 5, 2025.

Union Mutual respectfully requests that this action be stayed until after the May 2025 trial in the Underlying Action. In the alternative, Union Mutual respectfully requests a 90-day continuation of the existing stay after which the parties may provide an additional update on the Underlying Action.

After conferring with Tejada's counsel, we can further report that while Tejada does not agree with Union Mutual's legal and factual contentions with respect to its defense and indemnification obligations, he does agree that a continued stay will best serve judicial economy together with the best interests of the parties and overall efficiency – particularly given the pendency of the underlying state court litigation.

Thank you for your attention to this matter. If the Court has any questions, we are available at your convenience.

Respectfully submitted,

HURWITZ FINE P.C.


*Katherine Fleming*

Katherine A. Fleming

cc: All Counsel of Record (via ECF)

The Court thanks the parties for the status update. As both parties agree that a continued stay is warranted pending resolution of the underlying state court action, the Court extends the stay to **Friday, May 30, 2025**. The parties are to submit another status update on or before that date.

SO ORDERED.

  
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PAUL A. ENGELMAYER  
United States District Judge

Date: November 8, 2024